

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE AT CHATTANOOGA**

CARL LEWIS, in his individual capacity)	
and as next friend of K.M., a minor,)	
)	
)	CASE NO. 1:17-CV-72-JRG-SKL
Plaintiffs,)	
)	JURY DEMAND
)	
)	
v.)	
)	
HAMILTON COUNTY DEPARTMENT)	
OF EDUCATION; DURHAM)	
SCHOOL SERVICES, L.P., NATIONAL)	
EXPRESS, LLC, and BENJAMIN)	
COULTER, individually and in his)	
capacity as an agent for the Hamilton)	
County Department of Education,)	
)	
)	
Defendants.)	

COLLECTIVE MOTION OF ALL PARTIES TO STAY PROCEEDINGS

Come the parties to this action, plaintiff Carl Lewis, in his individual capacity and as next friend of K.M., a minor, and defendants, Hamilton County Department of Education (“HCDE”), Durham School Services, L.P. (“Durham), National Express, LLC (“NELLC”), and Benjamin Coulter, individually and in his capacity as an agent for HCDE (collectively “defendants”), and respectfully request that this Honorable Court stay these proceedings for the reasons explained below and as set forth in the Agreed Order attached hereto. Specifically, the parties request that the Court stay the proceedings until the Circuit Court for Hamilton County, Tennessee has rendered a decision as to the proper party to assert the rights of K.M.

I. BACKGROUND

This case arises out of the tragic school bus accident that occurred on November 21, 2016, in Hamilton County, Tennessee, which has given rise to numerous lawsuits filed principally in the Circuit Court for Hamilton County, Tennessee. K.M.'s mother, Shanquatta Byrd, filed suit in the Circuit Court for Hamilton County, Tennessee individually and as mother and next friend on December 6, 2016, against Durham, NELLC, and bus driver Johnthony Walker. That case was assigned civil action no. 161395.

On January 20, 2017, the Judges of the Circuit Court for Hamilton County, Tennessee transferred all cases filed in relation to the accident to Division I for consolidation for discovery, pretrial procedures, and trial with that bearing the low docket number, *Boling, et al. v. Durham School Services, et al.*, No. 16C1367, and those cases have been consolidated under the caption *In re: School Bus Accident Litigation* (the "Consolidated Litigation").

On February 24, 2017, Carl Lewis filed suit in the Circuit Court for Hamilton County, Tennessee individually and as father and next friend of K.M. against Durham, NELLC, and Mr. Walker, and added two new defendants, HCDE and Mr. Coulter. That case was assigned civil action no. 17C291. On March 10, 2017, Mr. Lewis filed a motion in that case requesting the appointment of a guardian *ad litem* to represent the interests of K.M. and determine which parent should act as her next friend.¹

On March 15, 2017, counsel for Durham and NELLC, with the consent of the remaining defendants, removed the case to this Court. (*See* Notice of Removal [1].) Also on March 15, 2017, counsel for Ms. Byrd filed in the Consolidated Litigation a motion and memorandum in support that, *inter alia*, moved the court "for an Order declaring that [Ms. Byrd] (and not [Mr.] Lewis) is the proper person to pursue all claims arising out of the injuries sustained by [K.M.] in

¹ Plaintiff voluntarily dismissed Mr. Walker on March 13, 2017.

the school bus crash that is the subject of this action and to dismiss or strike the complaint filed by [Mr.] Lewis [*i.e.*, Lewis].” Specifically, Ms. Byrd contends that (1) pursuant to Tennessee Code Annotated section 20-1-105(b), “she has the sole right to maintain an action for the expenses and loss of services resulting from the injury to [K.M.], (2) pursuant to Tennessee Rule of Civil Procedure 17.03, “as natural parent [she] has the right to bring an action for personal injuries on behalf of her minor child as next friend [for compensatory and punitive damages],” and (3) Lewis is subject to dismissal pursuant to the doctrines of *res judicata* and prior pending action. Currently said motion is to be heard on March 27, 2017; nevertheless, continuances and other delays in resolution of this critical issue are possible.

II. ANALYSIS

Courts have the power to stay proceedings “incidental to [their] power . . . to control the disposition of the causes of action on [their] docket[s] with economy of time and effort for [themselves], for counsel, and for litigants.” Lincoln Mem’l Univ. Duncan Sch. of Law v. Am. Bar Ass’n, No. 3:11–CV–608, 2012 WL 1108125, at *10 (E.D. Tenn. Apr. 2, 2012) (internal quotation marks omitted). In determining whether to stay an action, a court should consider: “(1) potential prejudice to the non-moving party; (2) hardship and inequality to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by the stay.” Id. (internal quotation marks omitted).

In the instant case, the first and second factors favor the grant of a stay because this is a collective motion joined by all parties. In addition, with regard to the third factor, permitting the Circuit Court for Hamilton County, Tennessee to determine whether Ms. Byrd or Mr. Lewis has standing to assert K.M.’s rights will have a significant impact on the issues to be litigated in the instant lawsuit and has the potential to spare the parties extensive briefing and the Court

extensive analysis of complex claims of federal law. In addition, as set forth in the Agreed Order attached hereto, the parties agree that defendants shall have thirty (30) days from the date the stay is lifted to answer or otherwise respond to the Complaint [1-1], so no significant delay will occur in these proceedings once the matter is decided.

III. CONCLUSION

For the reasons explained above, the parties respectfully request that this Honorable Court grant their motion and enter the attached Agreed Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Joseph Alan Jackson II
Joseph Alan Jackson II